

Don't Talk to the Police – Ever!



"Any lawyer worth his salt will tell the suspect, in no uncertain terms, to make no statement to the police under any circumstances."

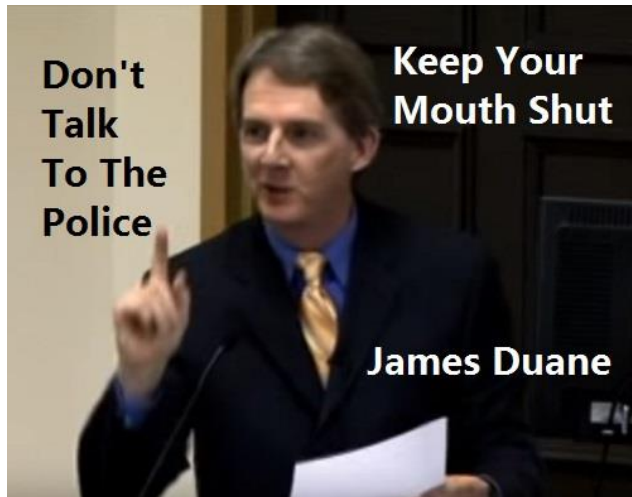
- Justice Robert H. Jackson

You should never talk to the police! Talking to the police, whether as a suspect in their investigation, or as a witness to some event they want to question you about, can never help you, but can always hurt you. Anything that you say to the police can be used against you, but it can't be used to help you, and if the police misrepresent, in their reports, what you say to them it becomes part of an official record that is extremely difficult to correct.

In his lecture, Don't Talk to Police, Regent Law School Professor James Duane explained in detail how any statement that you make to the police can harm you. Professor Duane's lecture is available on YouTube, and is highly recommended viewing for anyone concerned about their safeguarding their personal freedom.

Some people believe that failure to talk to the police and requesting a lawyer if you are detained by the police somehow means that you are guilty of a crime or have something to hide. However, this is definitely not the case. Your right to remain silent, and your right to legal counsel is intended to protect the innocent from police and government abuses. In *Ohio v. Reiner*, 532 US 17, 20 (2001) the US Supreme Court said: *"One of the Fifth Amendment's basic functions is to protect innocent men who otherwise might be ensnared by ambiguous circumstances... Truthful responses from an innocent witness, as well as those of a wrongdoer, may provide the government with incriminating evidence from the speaker's own mouth."*

You must never make any statement to the police. Even the most truthful and innocent statement can be used to bring criminal charges against you. U.S. Supreme Court Justice Stephen Breyer, writing in *Rubin v. United States* 524 U.S. 1301 (1998) stated: *"The complexity of modern federal criminal law, codified in several thousand sections of the United States Code and the virtually infinite variety of factual circumstances that might trigger an investigation into a possible violation of the law, make it difficult for anyone to know, in advance, just when a particular set of statements might later appear (to a prosecutor) to be relevant to some such investigation."*



Furthermore, the police can lie to you. While it may be illegal for you to lie to the police, the courts have held that the police may lie to a suspect during the course of an investigation.

During an interview (interrogation) the police can claim to have evidence and witnesses that don't actually exist. "Your friends have told us everything, so why don't you just come clean?" they may say. "We already have all the evidence we need to convict you." Most of the time statements like these are a lie. If the police really did know everything and

have all the evidence they needed to charge and convict you, they would go ahead and do so.

Even if the police do have some evidence against you, don't confirm what they have by making a statement. Ask for a lawyer, and then remain silent. There is nothing that you can say to the police that will cause them to release you and forget about the whole matter at hand; but anything that you do say may be used against you in a court of law.

Police will try other tricks to get you to talk. "Innocent people have nothing to hide, and want to cooperate" they tell you. In other words, you are guilty and must convince the police of your innocence. If the police didn't believe that you are guilty you wouldn't have been detained, and there is almost nothing that you can say that will change that belief. So, say nothing and consult with an attorney. Don't talk to the police! It can't help you, but can always hurt you.

Police promises of leniency are also usually empty. It is judges that determine punishment following conviction in a trial. Punishment for crimes is based upon statutes and sentencing guidelines. Promises of leniency from the police are just one more lie that they can and will tell you in an effort to get you to talk and incriminate yourself. It may be that your attorney and the prosecutor will work out a plea deal, but this is not a function of the police. Do not say anything to the police and there is a good chance that the charges against you may be dropped or significantly reduced before ever going to trial.

In his book *A Toast to Silence*, Peter Baskin, an attorney with more than 50 years' experience, wrote that the police method "*consists of the universally recognized and approved practice of deception, manipulation, misrepresentation, and any and every trick, tactic and seductive lie in order to get people to talk and give evidence against themselves*". Regent Law School Professor James Duane wrote in his book *You Have the Right to Remain Innocent*: "*Do not think for a minute that you can trust a police officer who seems to be open minded and undecided about whether he will arrest you after you are finished with an "interview" – the police are trained to act that way, to get you to talk with them for many hours until you finally give up in exhaustion.*" Laura Coates, CNN Legal Analyst and former Assistant United States Attorney for the District of Columbia wrote in her book *You Have the Right*: "*A police officer can try to trick you or lie to you or mislead you to get you to confess something...*"

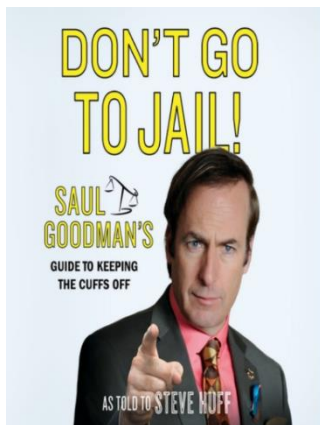
According to the Innocence Project, police interrogation frequently results in a false confession. Of 250 individuals who were convicted of a felony crime and later exonerated by

DNA evidence, more than 25% of these innocent people made a false confession or incriminating statement while speaking with the police. How many other people are serving time for a crime they did not commit, because they were tricked by the police during an interrogation?

Not only can the police lie to you, they can also lie about you. Norm Stamper, a former Chief of Police for Seattle, WA, wrote in his book To Protect and Serve: How to Fix America's Police, *"For anyone who has practiced criminal law in the state or Federal courts, the disclosure about rampant police perjury cannot possibly come as a surprise. "Testilying" – as the police call it – has long been an open secret among prosecutors, defense lawyers, and judges."* Stamper continued, *"In my professional experience, there are too many cops who become habituated to lying... Even as they put innocent people behind bars, or in the ground."*

"Sadly, deception is all but robotic in many police departments..." wrote Stamper. It is an all too common practice for police to lie in their testimony to the courts, in probable cause statements used to obtain warrants, and in their investigative reports forwarded to the prosecutor. Even if the police don't intentionally lie, they can misinterpret, make inaccurate reports, or fail to include exculpatory information. The law requires that exculpatory information be disclosed to defense counsel in a criminal case (See: Brady v. Maryland: 373 U.S. 83 (1963)), but the police can easily "lose" information that does not support the charges they are trying to make against you.

In an article in the Los Angeles Times, Joseph McNamara, a former Chief of Police in both Kansas City and San Jose, stated: *"As someone who spent 35 years wearing a police uniform, I've come to believe that hundreds of thousands of law enforcement officers commit felony perjury every year [when] testifying..."*



Any contact that you have with the police has the potential to make you a target of abuse and misconduct by the police. Law enforcement agencies have access to databases that can provide them with personal information about you, your family, your friends, and just about anyone else they may choose to target; and misuse of these databases by the police is commonplace! According to an Associated Press (AP) investigation: *"Police officers across the country misuse confidential law enforcement databases to get information on romantic partners, business associates, neighbors, journalists and others for reasons that have nothing to do with daily police work... Criminal-history and driver databases give officers critical information about people they encounter on the job. But the AP's review shows how those systems also can be exploited by officers who, motivated by romantic quarrels, personal conflicts or voyeuristic curiosity, sidestep policies and sometimes the law by snooping. In the most egregious cases, officers have used information to stalk or harass, or have tampered with or sold records they obtained."* To protect yourself against this type of police abuse, it is essential that you limit the amount of information, contained in government records that points directly back to you. Any contact with the police where they obtain basic information about you (i.e. name, date-of-birth, and address) increases the likelihood that information about you will be entered into a police database and that that information will be unlawfully accessed and exploited in the future.

This is just one more reason that you should never make a statement to the police under any circumstances.

Don't Talk to Cops!

By Robert W. Zeuner, Member of the New York State Bar

“GOOD MORNING! My name is Investigator Holmes. Do you mind answering a few simple questions?”

If you open your door one day and are greeted with those words, stop and think! Whether it is the local police or the FBI at your door, you have certain legal rights of which you ought to be aware before you proceed any further.

In the first place, when the law enforcement authorities come to see you, there are no “simple questions.” Unless they are investigating a traffic accident, you can be sure that they want information about someone and that someone may be you!

Rule number one to remember when confronted by the authorities is that there is no law requiring you to talk with the police, the FBI or the representative of any other investigative agency. Even the simplest questions may be loaded and the seemingly harmless bits of information which you volunteer may later become vital links in a chain of circumstantial evidence against you or a friend.

Do not invite the investigator into your home! Such an invitation not only gives him the opportunity to look around for clues to your lifestyle, friends, reading material, etc., but also tends to prolong the conversation. And, the longer the conversation, the more chance there is for a skilled investigator to find out what he wants to know.

Many times, a police officer will ask you to accompany her to the police station to answer a few questions. In that case, simply thank her for the invitation and indicate that you are not disposed to accept it at that time. Often the authorities simply want to photograph a person for identification purposes, a procedure which is easily accomplished by placing him in a private room with a two-way mirror at the station, asking a few innocent questions and then releasing him.

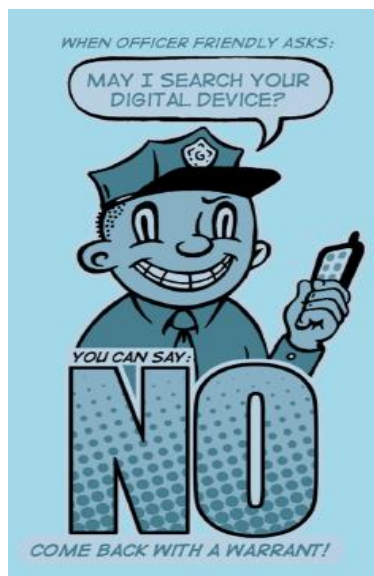
If the investigator becomes angry at your failure to cooperate and threatens you with arrest, stand firm. He cannot legally place you under arrest or enter your home without a warrant signed by a judge. If he indicates that he has such a warrant, ask to see it. A person under arrest or located on premises to be searched, generally must be shown a warrant if he requests it and must be given a chance to read it.

Without a warrant, an officer depends solely upon your helpfulness to obtain the information he wants. So, unless you are quite sure of yourself, **don't be helpful**. Probably the wisest approach to take to a persistent investigator is simply to say: “I'm quite busy now. If you have any questions that you feel I can answer, I'd be happy to listen to them in my lawyer's office. Goodbye!”

Talk is cheap. But when that talk involves the law enforcement authorities, it may cost you, or someone close to you, dearly.

Never Consent to a Search of Your Person, Property, Home, or Vehicle!

The police may ask for consent to search you, your personal property, your home, or your vehicle. Never consent to a search, and always clearly state that you do not consent to any search or seizure. When you don't immediately consent to a search request, the police may claim that they will just get a warrant and conduct the search anyway. Good! Warrants are based on probable cause, and while some judges just rubber stamp requests for warrants, others do not and will require that the police actually have probable cause before issuing a warrant.



If the police claim to have a search warrant, be sure that you read it and that it is signed by a judge. The police may only search for those things and in those areas authorized by the warrant. For example if the police have a warrant to search for a stolen automobile, they can search in your garage or barn, but not in your bedroom. However, the police may use as evidence anything they find when conducting a search for those things listed in the warrant. For example, if while searching your barn for a stolen automobile the police see your illegal moonshine still, they can charge you with possession of the illegal still.

Protect your electronic devices (i.e. cell-phone and computer) with encryption and a strong password. The police can force you to unlock your devices if they are locked with a biometric identified, such as a fingerprint or face scan, but the police may not force you to provide them with your password (the content of your mind).

While there are some circumstances where the police can conduct a search without a warrant, it is important to always state that you do not consent to the search. At trial, a search may be found to have been illegal, and thus anything obtained from the search would be excluded as evidence. However, if you consent to the search everything the police find (or plant) can be used as evidence against you.

Beware of Illegal Electronic Monitoring

Illegal monitoring of your electronic communications by the police, and surveillance of your on-line activities without a warrant is commonplace. A corrupt police agency could even collect everything you have ever published on the Internet in order to find something they could twist into a charge against you.

In a February 2015 presentation, Police Surveillance and How to Avoid It, to the Association of Alternative Newspapers/The Media Coalition Joint Conference in San Francisco, Eva Galperin of the Electronic Frontier Foundation warned of police use of cell-site simulators, called "Stingray". A Stingray mimics a cell-phone tower and forces all nearby mobile phones or devices to connect to it. Every phone that connects to the Stingray reports its number, GPS location, and the numbers of all outgoing calls and texts. That's every location and outgoing call and text log of every phone within a certain radius—up to several kilometers—of the Stingray.

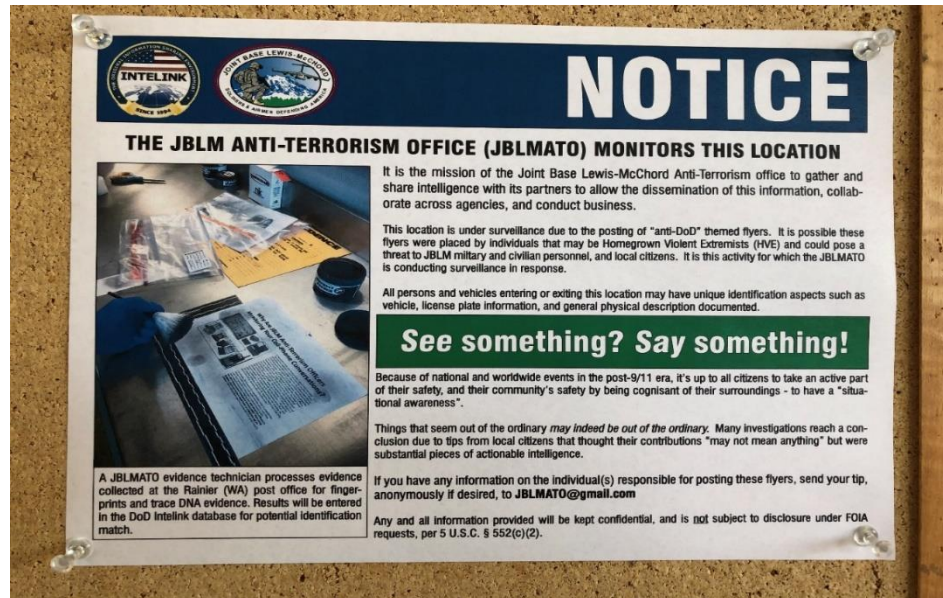
All of that is done without a warrant. (Judges in Tacoma, Washington signed more than 170 orders unknowingly authorizing Stingray use from 2009 to 2014 because police officers did not disclose the orders would be used to operate an IMSI catcher. Judges first learned they were approving IMSI catchers from local newspaper reporting.)



In November 2018, the Tacoma News Tribune reported that:

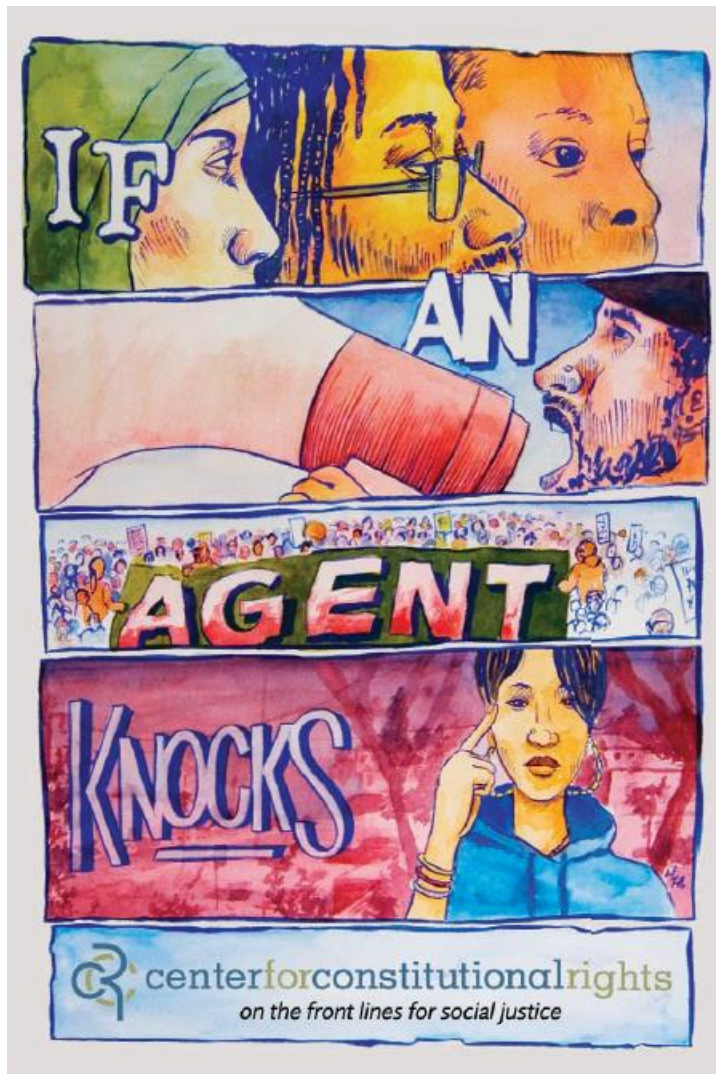
“Tacoma has appealed a court decision that resulted in a nearly \$300,000 payout after a judge ruled the city violated state law by withholding records related to a police surveillance device called a cell site simulator. In paperwork filed last week, Tacoma asked the Washington State Court of Appeals to review the ruling by Pierce County Superior Court Judge Helen G. Whitener. The judge found the city violated the state Public Records Act by deliberately withholding 11 records from the American Civil Liberties Union and three Tacoma plaintiffs. The documents concerned the use of the surveillance device — known as a Stingray — which mimics a cell phone tower and compels all nearby devices — not just the target’s phone — to connect to it. That concerned the ACLU and other civil liberties or privacy-focused groups. For violating the records law Whitener said June 25, Tacoma should pay \$182,340, plus \$115,530 for attorney fees and other costs.”

In a January 2019 motion for a protection order to prohibit the release of information to the public and the press, Joint Base Lewis-McChord (JBLM) expressed a concern about public disclosure of information alleging that **Anti-Terrorism Officers in the JBLM Directorate of Emergency Services (DES)** “were using Stingray, electronic warfare equipment, to unlawfully spy on citizens.” (Why would JBLM seek to conceal this if it wasn’t true?)



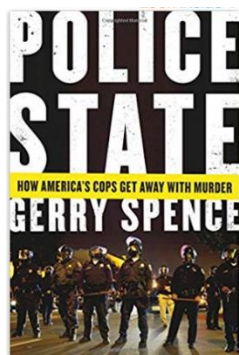
Illegal monitoring and surveillance by DOD employees is rampant, even though DOD regulations specifically prohibit this type of activity. Department of Defense Directive 5200.27 “Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense” states: *“No information shall be acquired about a person or organization solely because of lawful advocacy of measures in opposition to Government policy... There shall be no electronic surveillance of any individual or organization, except as authorized by law... No DoD personnel will be assigned to attend public or private meetings, demonstrations, or other similar activities for the purpose of acquiring information, the collection of which is authorized by this Directive without specific prior approval by the Secretary of Defense, or his designee... No computerized data banks shall be maintained relating to individuals or organizations not affiliated with the Department of Defense, unless authorized by the Secretary of Defense, or his designee.”*

An Army organization will not maintain a record describing how an individual exercises First Amendment rights... First Amendment rights include religious and political beliefs, freedom of speech and the press, and the rights of assembly and petition. (AR 25–22 “The Army Privacy Program”)



Federal law enforcement agencies like the Federal Bureau of Investigation (FBI) have a dark history of targeting radical and progressive movements. Some of the dirty tricks they use against these movements include: infiltration of organizations to discredit and disrupt their operations; campaigns of misinformation and false stories in the media; forgery of correspondence; fabrication of evidence; and the use of grand jury subpoenas to intimidate American citizens.

Today you must know and understand the threat posed by federal law enforcement agents and their illegal tactics as well as several key security practices that offer the best protection against them.

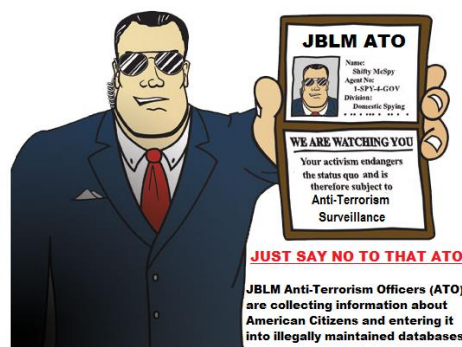


Gerry Spence, a legendary trial lawyer who has been practicing law since 1952 and has never lost a criminal case, wrote in his book Police State: How America's Cops Get Away With Murder that he had “*never represented a person charged with a crime in either a state or federal court, in which the police, including the FBI, hadn't themselves violated the law – and on more than one occasion, even committed the crime of murder.*” Mr. Spence went on to say that while he was speaking to a couple hundred criminal defense attorneys he said to them, “*please stand up if you can honestly represent to me that in every one of your cases the police or prosecutors have in some way violated the law*” I couldn't believe what I saw [said Mr. Spence]. All but four stood up, men, women, older lawyers and young, all with sad, serious faces looking directly at me. I turned to the four who remained seated. What about you? I asked. Why aren't you standing? The lawyer seated closest to me said, Well, Mr. Spence, you said in every case the cops violated the law. I've had a couple where they didn't. The other three nodded their agreement.”

To limit unlawful interception of your communications it is essential that you protect the content of your messages with end-to-end encryption, using apps such as Signal (<https://signal.org/>), Wickr (<https://wickr.com/>), and WhatsApp (<https://www.whatsapp.com/>). Protect the content of your computer with full-disk encryption, using programs such as BitLocker or VeraCrypt. Encrypt your e-mail with GnuPG (or other Open PGP encryption). Ensure that any devices that you carry with you are encrypted and secured with a strong password. Remember that the police can force you to give up biometrics (i.e. open a locked device with your fingerprint), but cannot legally force you to disclose the content of your mind – a memorized password.

Read the EFF guide Defending Privacy at the U.S. Border: A Guide for Travelers Carrying Digital Devices which not only provides useful tips for protecting your privacy when crossing the US border, but at any time when your electronic devices may be seized by the police.

Unlawful monitoring of American citizens, and maintaining records and databases about us for simply exercising our Constitutional rights, or opposing government misconduct is all too common. According to the ACLU: ***“There is simply no reason why the United States military should be monitoring the peaceful activities of American citizens who oppose U.S. war policies... When information about non-violent protest activity is included in a military anti-terrorism database, all Americans should be concerned about the unchecked authority this administration has seized in the name of fighting terrorism... Spying on citizens for merely executing their Constitutional rights of free speech and peaceful assembly is chilling and marks a troubling trend... It is an abuse of power and an abuse of trust for the military to play any role in monitoring critics of administration policies.”***



JBLM Anti-Terrorism Officers' Illegal Database

Sharing Their Illegally Collected Information About You With The United States Intelligence Community.

<https://inteldocs.intelink.gov/inteldocs/page/repository?path=%2FUser%20Folders%2Fv%2Fvessels%2Fdaniel.l.vessels%2FJBLM%20Protection%20Daily>

Intelink is a group of secure intranets used by the United States Intelligence Community. Intelink-U (Intelink-SBU) is a sensitive but unclassified (SBU) variant of Intelink which was established for use by U.S. federal organizations and properly vetted state, tribal, and local officials so sensitive intelligence information could be shared amongst a secure community of interest.



Heidi Boghosian, the former director of the National Lawyers' Guild, wrote in her book, Spying on Democracy:

"A civilian employee of the Fort Lewis Force Protection Division in Washington State struck up friendships with many peace activists. For at least two years, he posed as an activist with Port Militarization Resistance (PMR), a group in Washington opposing the Iraq and Afghanistan invasions. He gave information about planned protests to his supervisor, Thomas Rudd, who wrote threat assessments that local law enforcement officials used in harassment campaigns that included "preemptive arrests and physical attacks on peaceful demonstrations, as well as other harassment". One individual was arrested so many times that his landlord evicted him... In the words of the government agencies involved, they aimed to neutralize PMR through a pattern of false arrests and detentions, attacks on homes and friendships, and attempting to impede members from peacefully assembling and demonstrating anywhere, at any time. Harassment was systematic and pervasive. PMR participants were arrested not just locally, but in other venues, including the Denver Democratic National Convention in 2008 and a San Francisco protest at which they were the only ones arrested... The case revealed that today's military has continued to engage in COINTELPRO-type operations and shows the extent to which the lines between the military and civilian law enforcement have blurred. Forces now used against ordinary people engaged in free speech and protest include, increasingly, weapons and tactics used by the U.S. military for combat missions. The drift from passive intelligence gathering to offensive counterintelligence is one manifestation of the difference between civilian law enforcement principles and the military's exclusive focus on defeating perceived enemies through combat, propaganda, and covert operations... The role of civilian law enforcement, in theory, is to protect the public and the Constitution whereas the role of the military is to identify the enemy and neutralize them... When the military starts identifying peaceful dissenters here as the enemy, God help us all." (Boghosian 2013, 107-108)

In February 2019, Joint Base Lewis-McChord Military Police Investigations (MPI) presented perjured testimony to the US District Court in Tacoma, WA in order to silence claims that the installation's Anti-Terrorism Officers (JBLMATO) were "unlawfully releasing personal identifiable information and collecting intelligence on U.S. citizens". (This perjured testimony is just the type "Testilying" former Seattle Chief of Police Norm Stamper warned about.)

“Defense Department agencies improperly collected and disseminated intelligence on Planned Parenthood... an Air Force briefing improperly included intelligence on an antiwar group called Alaskans for Peace and Justice, and Army Signals Intelligence in Louisiana unlawfully intercepted civilian cell phone conversations.” (Fisher, W. – Truth Out)



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A QUICK REFERENCE GUIDE FOR REPORTING QUESTIONABLE INTELLIGENCE ACTIVITIES

Directive-Type Memorandum (DTM) 08-52
DoD Guidance for Reporting Questionable Intelligence Activities and Significant or Highly Sensitive Matters

WHAT IS A QUESTIONABLE INTELLIGENCE ACTIVITY?

Most intelligence personnel correctly associate questionable intelligence activities with improper collection on U.S. persons; however, that is only one aspect of questionable intelligence activities. The recent allegations of misconduct and abuse of detainees by military, civilian, and contractor personnel involved with the interrogations in Iraq, Afghanistan and Guantanamo are a prime example of questionable intelligence activities. The purpose of the following is to assist you in understanding this very important responsibility, a responsibility that applies to everyone involved with an intelligence mission, whether you have an intelligence specialty or not. But, to answer the initial question:

A questionable intelligence activity is one that may violate the law, any Executive Order (such as EO 12333, *United States Intelligence Activities*) or Presidential directive or applicable Department of Defense policy (such as DoD 5240.1-R, *Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons*), as well as your parent organization's specific guidance.

Examples of a questionable intelligence activity include, but are not limited to, the following:

- Alleged abuse and mistreatment of detainees and prisoners by or directed by intelligence personnel.
- Tasking intelligence personnel to conduct intelligence activities that are not part of the organization's approved mission, even if they have the technical capability to do so.
- Providing intelligence services and/or products without proper authorization.
- Failure to file proper use statements for imagery collection associated with U.S. persons.
- Collecting information on U.S. persons, even through open source, when it is not part of the unit's mission.

Actions that are not *intelligence*, such as fraud, waste and abuse, personal misconduct, and minor security violations/deviations are not normally processed through Intelligence Oversight channels. There are administrative and judicial systems designed for these activities. But, when in doubt, ask!

In May 2019, the Military Times reported that government prosecutors at Naval Base San Diego were illegally spying on defense attorneys and a Navy Times journalist while withholding information from the judge. The prosecution provided documents to the defense team that were discovered to contain a hidden electronic tracking device. The tracking device was capable of revealing the location of the user, how long a user spent on a web page, what browser was being used, and other information. Under U.S. criminal law, authorities normally have to obtain a subpoena or court order to acquire IP addresses or other metadata from a private computer. Not using one could be a violation of existing federal privacy laws, including the Electronic Communications Privacy Act. **(Illegal electronic monitoring by the government is rampant!)**

Corrupt government agents can even go through everything you have ever published on the Internet in order to find something that they can twist into a criminal charge to be used against you.

“You don’t have to have done anything wrong, you simply have to eventually fall under suspicion from somebody, even by a wrong call, and then they can use this system to go back in time and scrutinize every decision you’ve ever made, every friend you’ve ever discussed something with, and attack you on that basis, to sort of derive suspicion from an innocent life.” ~ Edward Snowden interview with G. Greenwald and L. Poitras, June 9, 2013.

Refuse to Take Standardized Field Sobriety Tests (SFST)



Roadside tests for intoxication (driving under the influence (DUI) are voluntary, and you should never consent to requests (demands) by police that you take these tests. When you apply for a driver's license there is implied consent that you will submit to a breath or blood test to determine your blood alcohol content (BAC). However, these BAC tests are normally conducted at the police station or perhaps at a hospital. Implied consent does not apply to these roadside tests.

The Standardized Field Sobriety Tests (SFST) – stand on one foot, walk a straight line, say the alphabet backwards, etc. – is a voluntary and subjective test used, in part, to help the police develop probable cause to take you in for a BAC test. Most any DUI defense attorney will advise you not to take the SFST. The results of the SFST (whether you passed or not) is based on the subjective opinion of the police officer giving you the test, and remember that the police can and do lie. Check the web-sites of attorneys in your state and talk to an attorney for advice about SFSTs before you are stopped for a DUI check.

One law firm's web-site in Washington State said: *"Unlike blood and breath testing, submitting to 'field sobriety tests' is strictly voluntary, although few police officers will tell you so. In many respects, these tests are designed for failure and of the several tests the officer might ask you to take, only three have been shown to have any relevance to proving legal intoxication. The alphabet test, the finger-to-nose test, the finger-count test and the standing balance (usually administered along with the finger-to-nose test) are scientifically proven to not correlate to legal intoxication. According to the National Highway Traffic Safety Administration (NHTSA), the only tests that have been shown to have some relevance to establishing legal intoxication are the One Leg Stand, the Heel-to Toe and the Horizontal Gaze Nystagmus (HGN)." (Cowan Kirk Kattenhorn)*

A Portland, Oregon law firm further explained why you should not take SFSTs, saying: *“Drivers stopped and investigated for Driving Under the Influence of Intoxicants (DUI) in Oregon are almost always asked to perform Field Sobriety Tests (typically abbreviated “FSTs”)... also often referred to as “Standardized Field Sobriety Tests (SFSTs)” or “Standard Field Sobriety Tests (SFSTs)”.*

Field Sobriety Tests are supposed to help law enforcement gauge whether or not a given driver may intoxicated and under the influence of alcohol or controlled substances. However, many law enforcement officers in Oregon do not know how to properly administer Field Sobriety Tests in a manner that is both fair to the test subject and scientifically valid. Most officers have gone through, at most, a few days of training and fancy themselves experts in human psychology and physiology.

Most law enforcement officers in Oregon begin field sobriety testing by asking drivers to “voluntarily” get out of their vehicles to “do a few tests.” The officer will often say, “I just want to make sure you’re okay to drive.” This statement will often seem to indicate to the driver that the officer wants to driver to do a few tests, but the driver will ultimately may be allowed to drive away. Most officers intentionally mislead drivers with this statement knowing full-well that they will be arresting the driver irrespective of how the driver does on the Field Sobriety Tests.

Officers, especially seasoned officers, are very well practiced in the art and science of deceit. Yes, you read that correctly: Officers are trained to lie and mislead suspects in order to obtain incriminating evidence. Make no mistake about it: drivers who are being investigated for DUI are “suspects” whether they know it or not. One of the most obvious tactics officers will use in investigating drivers for DUI is to ask them “How much have you had to drink?” This question, of course, assumes that the driver has had anything to drink at all. Officers will also attempt to ask “Is there any lawful reason you were speeding?” This is known as a compound question because in answering the question, the person responding is required to accept facts presented in the question (i.e. that the driver was actually speeding). A more subtle and dishonest technique that officers use to mislead drivers is with their body language and hurried speech.

The law in Oregon is clear: the performance of Field Sobriety Tests is akin to consenting to a search. Drivers have an absolute right to refuse Field Sobriety Tests. However, officers almost never tell drivers that they have this right. Instead, officers typically combine body language and smooth talking to attempt to provide further information [that] the officer can rely upon in making his/her arrest. Here’s how it is done: Most officers make their request of drivers for Field Sobriety Tests in an intentionally hurried fashion. Officers will also make the request while stepping to the side of the driver’s door with a hand or body motion to indicate that the driver needs to step from the vehicle. The fact of the matter is that the vast majority of drivers who are asked to perform Field Sobriety Tests report later that they had absolutely no idea that they had the right to refuse the tests.

So why would a driver want to refuse the tests? Because they are extremely difficult to do, and most officers are not interested in fully explaining each test to you in sufficient detail for you to understand what you are being asked to do. Would you be willing to take any other complicated physical balancing test in life with less than one minute instruction? Then why would you be willing to take a test that could result in your going to jail with less than one minute instruction?” (Romano Law, P.C.)

In every case, of the multiple web-sites we reviewed, when an attorney gave an on-line recommendation about SFSTs, that recommendation was **Do Not Take The SFST!**

Additional examples include:

I have a blanket rule - always say no. Even if you are stone cold sober, refuse to participate in these tests [field sobriety tests]... in Washington State, at least, you do not have to take field tests. You can say no without fear of any retribution whatsoever (you might get arrested, but you're probably getting arrested anyway). You may be thinking, "even if I do bad on the tests and I'm sober my breath test level will come up low and I'll be released." Think again. You do not have to have a breath test over .08 to be charged with DUI. If your breath test is under .08 they will use whatever other evidence they have to try to convict you - LIKE YOUR PERFORMANCE ON FIELD TESTS! (Emerald City Law Group, Seattle, WA 98119)

I'm always asked whether someone should (or more commonly should have) take field sobriety tests when asked. My common answer is no! Now there is new case law in Washington, specifically State v. Mecham, wherein the court held that although the tests are voluntary the "refusal" to participate in them can be used to show a consciousness of guilt! Really! If you decline a voluntary test a prosecutor can say you are guilty? Yup, according to our Washington State Court of Appeals... In response, what I would recommend is that you make sure and point out the reason you are declining the tests, some examples would be: (1) a prior or current injury, (2) I was advised to do so by an attorney, (3) if you aren't going to record them I don't want to take them because you could say I "failed" when I didn't, (4) I've been advised they are impossible to pass, they are subjective, and I don't believe I am guilty but I am declining these tests. (Webb Law Firm, Seattle, WA 98101)

Drivers have no obligation to submit to any field sobriety tests or answer any questions by the officer. Until the driver is officially detained and charged with a DUI, they have the right to refrain from all of this. The officer may say that it will go better for them if they submit to the tests or are honest about drinking, but this is rarely the case. The officer wants probable cause or an admission of guilt so that they can make the arrest and legally require the driver to take a chemical BAC test. Never submit to a field sobriety test, regardless of what type of situation you're in. (Dellino Law Group, Seattle, WA 98134)

As a driver, you should keep in mind that you are not required by Washington State law to take these tests, and you should respectfully decline these tests so that evidence cannot be used against you. The only tests that you are actually required to take are the evidential chemical tests that are administered at the jail, hospital or police station. (Blair | Kim, Attorneys At Law, Seattle, WA 98121)

The field sobriety tests are voluntary, which means you have every right to politely decline the tests and diminish the strength of the State's case if you are inevitably charged with a DUI. These tests are pretty challenging in nature and the nervousness that follows law enforcement can make them even more difficult. This is the reasoning behind our suggestion to decline all types of field sobriety tests while simultaneously remaining cooperative with law enforcement. (Raymond W. Ejarque, Attorney At Law, Tacoma, WA 98402)

These tests [field sobriety tests] are incredibly problematic in determining if an individual can drive safely. In fact, someone who has not had a drop of alcohol might be unable

to perform all of the field sobriety tests. Each person's individual body, balance and coordination can skew the test results, giving law enforcement an inaccurate determination of whether that individual is drunk. Finally, you have rights. Field Sobriety Tests are voluntary. In the State of Washington you are under no obligation to perform field sobriety tests. The burden of proof is on the State. Why make their job easier by voluntarily agreeing to perform a test sober individuals are capable of failing? (Matthew R. Hoff, Attorney At Law, Vancouver, WA 98663)

If you have been pulled over by law enforcement or otherwise contacted by law enforcement, and you have been asked whether you will submit to voluntary field sobriety tests, you have the right to refuse to submit to these tests. There is no penalty for refusing these tests. It is unlawful for the police officer to arrest you solely for refusing field sobriety tests. Chances are, if the officer is asking you whether you mind performing some tests to "make sure you're O.K. to drive", the officer is going to arrest you anyway. The officer has presumed you to be guilty unless you prove yourself innocent beyond all doubt. In sum, it is in your best interests to politely decline all field sobriety tests. Without the field sobriety tests, the officer may not have probable cause to arrest you. (The Law Offices of Barbara A. Bowden, Lakewood, WA 98499)

Washington field sobriety tests - just say NO. Field sobriety tests are not required by Washington State law. Regardless of why you are pulled over or the officer's suspicions, you are under no obligation to take these tests. If you have been pulled over by Snohomish County law enforcement, or by any other law enforcement agency in Washington State for that matter, you have an absolute right to refuse to submit to any field sobriety tests, and you should refuse to take them. Be polite, but firm. (The Law Offices of Jason S. Newcombe, Everett, WA 98201)

Field sobriety tests are common tests performed to indicate impairment. These tests are voluntary. If the officer asks you to do these tests do not take them. Refuse to take them in a courteous manner. You could say a simple no thank you I would prefer not to take them. Or you could ask the officer if they are 100% accurate and then say no as any officer should not say they are. By refusing these tests there is no penalty on your part and only helps them determine a reason to take an evidential chemical test wither through a breathalyser or blood test. The field sobriety tests are subjective on how the officer writes down the results and are commonly failed by someone who is sober. They are asking you to perform a test that is not normal behavior and is difficult to do. (West Law Office, Russell West - Attorney, Spokane, WA 99204)

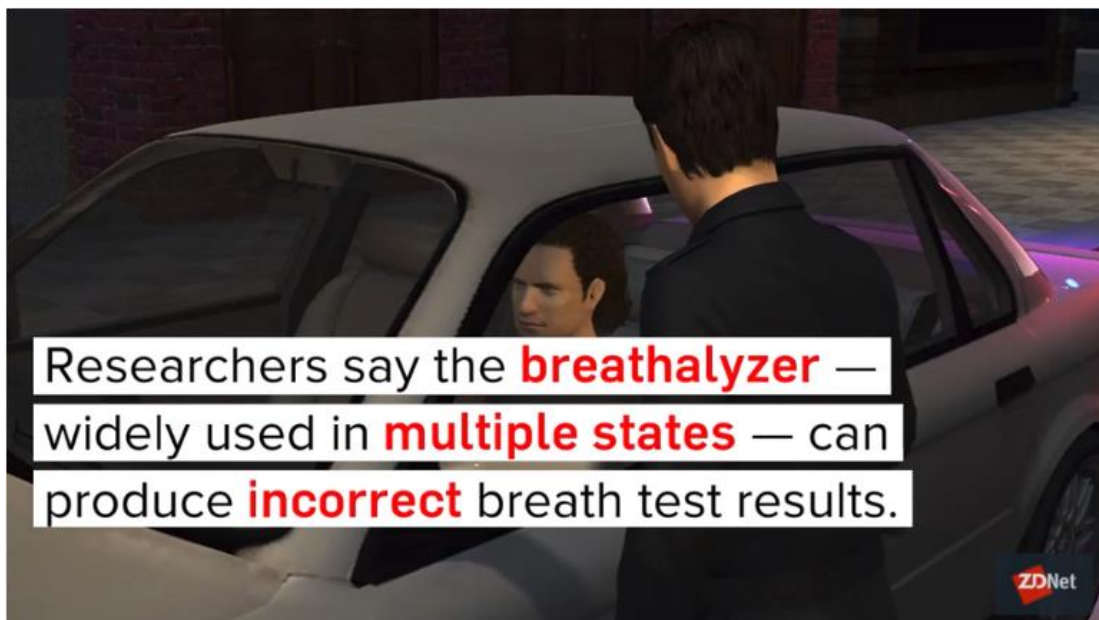
If you are pulled over on suspicion of Driving Under the Influence (DUI), the police officer may ask you to submit to a Field Sobriety Test (FST). In Washington State you are under no obligation to submit to a FST. If an officer asks you to exit your vehicle and complete a [FST], it is critical that you know your rights. Washington State law does not require you to submit to FSTs. A police officer may lead you to believe that you must take the FSTs, but you are under no legal obligation to do so. In general, you can and should politely refuse to take any FST. These tests are not measured by an objective standard and typically will only serve to harm your DUI defense. (Padula & Associates, LLC, Seattle, WA 98122)

When police stop a driver after dark on a weekend, chances are they already think the person is driving under the influence. However, in order to make a DUI arrest, police need "probable cause". This means they must have facts leading a reasonable person to believe that the person is driving under the influence of intoxicants. In other words, police cannot just arrest someone on a mere hunch that the person is intoxicated while driving. They need specific facts

suggesting the person is actually driving drunk. Police officers develop probable cause, or facts, through their own observations. Much of these facts come when the driver performs and fails the field sobriety tests (FSTs). The common FSTs include an eye test following a pen, the 9-step line walk and turning test, and standing on one foot for 30 seconds. In addition to these three FSTs that people typically think of, there is also a Preliminary Breath Test (PBT). This is a small, hand-held, electronic breathalyzer tester used for roadside breath tests. Just like the FSTs, the PBT test is entirely optional. Drivers are under no legal requirement to take a PBT. (Lustick, Kaiman, & Madrone, PLLC, Bellingham, WA 98225)

It is important to understand that the results of SFSTs are entirely subjective, based on the opinion of the police officer administering the tests. If you consent to the SFST, and in the police officer's opinion you failed the tests, this failure can be used as part of the probable cause to arrest you for DUI. Following your arrest for DUI you will be taken to a police station where you be given a BAC test. (If you refuse the BAC you driver's license may be suspended based upon implied consent.) Although the BAC level for intoxication is 0.08 in each state, you may still be charged with impaired driving, even if you have a lower BAC. By refusing to take the SFST you may be released before being taken to the police station for a BAC, the police officer lacking probable cause to do so. If you are arrested and taken for a BAC, having refused the SFST you give you defense attorney more to work with, being able to argue that the police officer lacked probable cause to arrest you for DUI in the first place. This is especially true if your BAC results are below 0.08.

Taking the SFST can never help you, but it can always hurt you. Never consent to the SFST, or other roadside sobriety test (such as the Preliminary Breath Test (PBT)). A PBT is a roadside breath test device. The PBT is not highly accurate, but can be used to develop probable cause to arrest you for DUI.



Understand Your Rights

To preserve your rights and freedoms, you must understand what those rights and freedoms are; and you must understand what your responsibilities are with regard to those rights and freedoms. Take time to download, read, and understanding the following pamphlets:

- Agent At The Door (CLDC)
- If An Agent Knocks (Center for Constitutional Rights)
- Know Your Rights: Stopped by the Police, Immigration Agents or FBI (ACLU)
- Know Your Rights! Tips for Talking to the Police (EFF)
- You Have the Right to Remain Silent (National Lawyers Guild).

Watch Professor James Duane's YouTube video [Don't Talk to Police.](#)

Watch the Flex Your Rights YouTube video [Busted - Citizen's Guide to Surviving Police Encounters.](#)

Listen to Gerry Spence's audio book [Police State: How America's Cops Get Away with Murder](#)

Having a general understanding of the law can help you understand your rights and responsibilities under the law. The Great Courses program [Law School for Everyone](#) is a good resource for gaining an understanding of U.S. law. To understand the law as it relates to government surveillance, the Great Courses program [The Surveillance State: Big Data, Freedom, and You](#) is worth reviewing. Check your public library for these DVD courses.

Always Contest Any Citations (Tickets) That You Are Issued By the Police

A police officer may issue hundreds of citations for minor offenses every year. The reason that this happens is that most people just pay the fine – adding to the state's coffers – without taking the time to fight the ticket. Because the police officer doesn't have to justify the validity of all of these citations in court, he or she can make stop after stop and issue citations for the most minor (and even questionable) offenses. Make the police appear and prove in court the offenses they claim you have committed. Remember, you are innocent until proven guilty – not guilty just because the police have cited you for some offense.

If the police know that every time they issue a citation it is highly likely that the case will go to court and the citation will be challenged, they will stop writing citations for minor and questionable offenses. Of course, the police will still continue to issue citations for more serious offenses, where it is worth their time to appear in court, but minor citations issued as a way to generate revenue for the state will stop, or at least be significantly reduced. If the police actually had to appear in court and justify each citation they issue, the legal system would grind to a halt.

By contesting every citation issued by the police, we send a message to government that the duty of the police is not to serve as revenue collectors for the state. There is also the very strong probability that when you challenge a citation in court you will win your case, or that you can at least get the fine reduced. **Never surrender your rights by just paying the fine!**

Correct Errors in Federal Government Records

The Privacy Act (5 U.S.C. § 552a) applies to Federal government records, and similar requirements may be incorporated into the laws of the several states. One very important aspect of the Privacy Act is that it lets you correct inaccurate information about you in Federal government records.

The Privacy Act of 1974 (5 U.S.C. 552a, as amended) provides that:

(1) An individual can request amendment of records about him/herself when those records contain information that is not accurate. 5 U.S.C. § 552a(d)

(2) Ten working days after receipt of an amendment request, an agency must acknowledge it in writing and promptly either:

(a) correct any information which the individual asserts is not accurate, relevant, timely, or complete; or

(b) inform the individual of its refusal to amend in accordance with the request, the reason for refusal, and the procedures for administrative appeal. 5 U.S.C. § 552a(d)(2).

(3) The agency must permit an individual who disagrees with its refusal to amend his record to request review of such refusal, and not later than 30 working days from the date the individual requests such review, the agency must complete it. If the reviewing official also refuses to amend in accordance with the request, the individual must be permitted to file with the agency a concise statement setting forth the reasons for disagreement with the agency. 5 U.S.C. § 552a(d)(3). The individual's statement of disagreement must be included with any subsequent disclosure of the record. 5 U.S.C. § 552a(d)(4). In addition, where the agency has made prior disclosures of the record and an accounting of those disclosures was made, the agency must inform the prior recipients of the record of any correction or notation of dispute that concerns the disclosed record. 5 U.S.C. § 552a(c)(4).

If the Federal government has made an inaccurate statement about you and that statement has been entered into an official record, you can petition the government to correct the record, appeal their refusal to do so, require them to investigate any information that you assert is not accurate, relevant, timely, or complete; and allow you to put your own statement into the record if the government refuses to correct the inaccurate information after you have brought it to their attention.

Don't just ignore the lies about you entered into government records. Use the Privacy Act to correct the record, or at a minimum to get your own statement into the record, exposing police lies and corruption that have resulted in false information entered into government records. When the police know that they may be required to correct information that is not accurate, relevant, timely, or complete, they may be more careful and accurate in their reports.

The **Flex Your Rights** organization provides the following tips for dealing with the police:

1. **Always stay calm and cool.**
2. **Cops can lie. Don't get tricked.**
3. **Don't agree to a search. Ever.**
4. **Don't just wait. Ask: "Am I free to go?"**
5. **Don't do shady stuff in public.**
6. **Don't admit anything. Remain silent.**
7. **Ask for a lawyer.**
8. **Don't let them in without a warrant.**
9. **Don't panic. Report police misconduct later.**
10. **FILM the police!** (You have the right to record the police in all 50 states.)

For more information on safeguarding your rights, contact...

ACLU of Washington
901 5th Ave #630, Seattle, WA 98164
Tel: (206) 624-2184
<https://www.aclu-wa.org/>

Electronic Frontier Foundation (EFF)
815 Eddy Street, San Francisco, CA 94109
Tel: (415) 436-9333
<https://www.eff.org/>

YOU HAVE THE RIGHT TO:		IF YOU FEEL YOUR RIGHTS HAVE BEEN VIOLATED:
ASK IF YOU ARE FREE TO LEAVE <ul style="list-style-type: none">• If the answer is yes, DO IT!• Not every encounter with police is a "stop" and you may be free to just walk away.	DECLINE A REQUEST TO SEARCH your car, your home, your belongings, or your person. <ul style="list-style-type: none">• Calmly say "I do not consent to a search."• A warrantless search is allowed in some circumstances, but it is always helpful to say you don't consent to a search.• An officer can pat you down if they suspect a weapon.• An officer can require that you show your ID if you are driving a car or in certain cases involving alcohol or marijuana.• An officer must have a warrant to enter your home unless they are responding to an emergency.	WRITE DOWN everything you can remember, including the officer's name(s) and/or badge number(s). <ul style="list-style-type: none">• TAKE PHOTOGRAPHS OF ANY INJURIES you incurred and SEEK MEDICAL ATTENTION even for minor injuries.• CONTACT A LAWYER and consider FILING A COMPLAINT.
REMAIN SILENT <ul style="list-style-type: none">• Seriously, you don't have to talk!• You can say, "I'm exercising my right to remain silent" and then don't speak. RECORD the interaction, but be aware that holding or reaching for a mobile device may be viewed as threatening.		For more information on your options, contact the ACLU of Washington: <i>phone: 206.624.2180</i> <i>(10:00-2:00, Monday-Thursday)</i> <i>mail: 901 Fifth Ave., #630</i> <i>Seattle, WA 98164</i> <i>online: aclu-wa.org/help</i>
ASK FOR A LAWYER immediately if you are arrested or taken to a police station. You don't have to know a lawyer; you can ask for information to call one and they must provide it.		

AGENT AT THE DOOR

What you may do if government agents—police officers, FBI agents, etc.—want to talk to you about yourself, your friend, roommate, family member, co-worker, tenant, or someone else you know.

YOUR LEGAL RIGHTS:

YOU DON'T HAVE TO ANSWER THE DOOR

- If government agents are at the door, you don't have to answer.
- If they say that they have a warrant, you may ask them to slide it under the door so that you can review it to make sure it is accurate (correct address, etc.) before opening the door. Even if the warrant is correct, you may still tell them that you do not consent to a search. If they have a search warrant, they do not have to wait for you to open the door and can legally break down the door under certain circumstances.

IF THEY'VE ALREADY APPROACHED YOU...

- If you've opened the door before discovering that they are government agents, you may step outside and completely close the door behind you. **YOU DO NOT NEED TO LET THEM INSIDE** and **YOU DO NOT NEED TO CONSENT TO A SEARCH**. If they have a valid warrant they may enter and search without your consent. By providing consent you waive your legal protections.
- If they've approached you on the street, at work, or somewhere else outside of your home, you do not need to go anywhere with them unless they arrest you, and you may make sure that they do not follow you anywhere.

WHAT YOU CAN SAY:

"I DO NOT WISH TO SPEAK WITH YOU" OR "I WISH TO REMAIN SILENT."

"I WANT TO SPEAK TO AN ATTORNEY." (you do not need to provide the name of attorney)

"MAY I HAVE YOUR CARD?"*

*If they don't have a card to give you, you can take note of their names and the government agency to which they belong as soon as they leave.

AFTER THEY LEAVE

- You may write down everything you remember as soon as possible—questions asked, who and how many of them, etc.
- You may notify the person that they were trying to ask you about (if it was someone other than yourself) and give them all of the information you wrote down and any cards for them to give to their attorney. Electronic communications (phone, email, etc.) are monitored by the government.
- Consider whether it is appropriate or not talk to third parties about the visit without the consent of the person being asked about.

FINAL POINTS:

- Police officers and other government agents are **ALLOWED** to lie to you, and they make regular use of this tactic. You do not need to trust what they tell you about the person or their reason for asking about that person.
- You have the **RIGHT** not to answer any questions.
- You **NEVER** have to consent to a search of any type. If a search situation arises, you may state: "I do not consent to a search."
- The government investigates people for a variety of reasons—including political beliefs and constitutionally protected activities, not necessarily because someone did something wrong.

"We just
want to talk
to you about
_____."



"Any lawyer worth his salt will tell the suspect, in no uncertain terms, to make no statement to the police under any circumstances." - Justice Robert H. Jackson.



Portland General Defense Committee

Yesterday an FBI agent w/ the JTTF* walked into a shelter in Portland asking for a particular staff member who'd picked up donations @ Occupy ICE PDX. When staff asked for a warrant the agent promptly left, leaving a business card.

If contacted, don't panic! Follow these steps:

CONTACTED BY COPS OR FEDS?

- DON'T SAY ANYTHING. DON'T ANSWER ANY QUESTIONS.
- KEEP YOUR DOOR CLOSED & LOCKED.
- STAY INSIDE.
- CALL PORTLAND GDC:

(503)-208-4782
ASKPDXGDC
@RISEUP
.NET

WE PLAY FOR KEEPS

ACAB



National Police Accountability Project

a project of the National Lawyers Guild

www.nlg-npap.org

NATIONAL LAWYERS GUILD

Hotline: 888 NLG-ECOL (654-3265)

@NLGnews /NLGNational

www.nlg.org



